IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.12.2006

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.39487 of 2006
and M.P.No.1 of 2006

N.Pasupathy ... Petitioner

Vs.

1. The Additional Director General of Police,
(Law and Order)
Chennai 600 004
(Appellate Authority)

2. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.
(Disciplinary Authority)

3. The Additional Superintendent of Police,
Prohibition & Enforcement Wing,
Enquiry Officer,
Cuddalore District,
Cuddalore.

... Respondents

PRAYER: This Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorified Mandamus, calling for the records relating to the proceedings R.O.No.261/06 dated 22.06.06 of the 2nd respondent and rejected by the 1st respondent in Proceedings No.Rc.No.142545/AP.I(2)/2006 dated 19.09.2006 and quash the same as null and void and direct the respondents 2 to 3 to allow the petitioner to serve as Inspector of Police with consequential benefits.

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For Petitioner : Mr.P.Jayaraman S.C. for
Mr.P.S.Sivashanmugasundaram
For Respondent : Mr.D.Srinivasan, G.A.

COMMON ORDER

The writ petition is filed challenging the order of the second respondent dated 22.06.2006 as confirmed by the first respondent dated 19.09.2006 and with a direction to the second and

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third respondents to permit the petitioner to serve as Inspector of Police with all consequential benefits.

2. The petitioner was appointed as Grade-I Police Constable on 01.02.1972 and promoted as Head Constable in 1979 and subsequently, promoted as Sub-Inspector of Police in 1983. The petitioner was suspended by the second respondent while he was holding as Inspector on 11.05.2006. In the meantime, the second respondent has issued a charge memo to the petitioner on 12.05.2005 which is as follows:

> "1. Failure to register a case of cognizable nature when it was reported to him on 20.02.2005 @ 2000 hrs by Tr.K.Sureshraj S/o Tr.Krishnaraj, Nadu Street, Arulavadi village Arakandanallur Police Station limit.
>
> 2. Having registered the F.I.R.antedated after the complaint was given to Inspector General of Police, North Zone and instructions were issued by him on 24.02.2005 directing some other Inspector to register a case and investigate and thereby attempted annul the instructions of Supervisors.
>
> 3. Dereliction of duty by having registered this case of a pure professional house burglary by night in Arakandanallur P.S.Cr.No.87/05 as a N.P. Case with intention to avoid the crime review and crime statement etc.,
>
> 4. Highly reprehensible conduct in having destroyed the F.I.R.in Cr.No.87/05 registered u/s 4(1) Cr.P.C. And replaced it by another F.I.R. Containing offence u/s 457, 380 IPC (NP) IPC.
>
> 5. Highly reprehensible conduct in having lost the counter foil of the arrest Card No.279, in A.K.Nallur P.S.Cr.Nos.88/05 and 89/05 u/s 41(1) Cr.P.C., the number which was shown in F.I.R. Index Register.
>
> 6. Highly reprehensible conduct in having destroyed and replaced the G.D. Of Arakandanallur P.S. Dated 20.02.2005 with assistance of HC 736 Shanmugam and thus attempted to Burk the vital records of the station and also lost the G.Ds. Dated 21.02.2005 and 22.02.2005 of Arakandanallur P.S."

3. The third respondent was appointed as Enquiry Officer and after examination of 9 witnesses and marking as much as 13 documents and examining the witnesses produced on the side of the petitioner numbering 3 and also marking various documents the

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Enquiry Officer has submitted his explanation. The petitioner has also submitted his representation by way of written statement on 24.02.2006. The second respondent having accepted the report of the Enquiry Officer, the third respondent, by an impugned order dated 22.06.2006, has awarded the punishment of reduction in rank by one stage for a period of three years to be spent on duty. The petitioner has preferred an appeal against the order of the second respondent to the first respondent on 26.06.2006. Since the appeal was not disposed of, the petitioner has challenged the order of punishment imposed by the second respondent in W.P.No.21053 of 2006 and this Court by an order dated 05.07.2006 has directed the first respondent before whom the appeal was filed to dispose of the appeal. It was subsequently, the first respondent has passed the impugned order dated 19.09.2006 rejecting the appeal. The first respondent being the appellate authority, after extracting the charges, has passed the following order:

> "2. The Inquiry Officer (Viz.) the Additional Supreintendent of Police, PEW. Cuddalore who conducted the oral Inquiry has held the charge as proved in the minutes first cited.
>
> 3. Agreeing with the findings of Inquiry Officer in holding the charge as proved the punishing authority (Viz.) the Deputy Inspector General of Police, Villupuram Range has imposed the punishment of "Reduction in rank by one stage for a period of three years to be spent on duty" on the delinquent vide his order 2nd cited.
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> 4. He has now submitted an Appeal petition dated 26.06.2006 to cancel the punishment imposed on him. The appeal petition is within the time limit.
>
> 5. I have gone through the appeal petition and connected records carefully. The contention of the petitioner is not accepted. No new points have been furnished by the delinquent. His appeal petition is considered and rejected."

4. The orders of the second respondent and also the subsequent order of the first respondent are challenged on various grounds including that as far as the order of the appellate authority dated 19.09.2006, the same is against in violation of Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. That apart, the petitioner has also challenged the procedure followed by the Enquiry Officer while examining the witnesses, inasmuch as the Enquiry Officer has not elucidated any question to prove each counts of the charge and not treated them aspired.

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5. According to the petitioner, the Enquiry Officer's report itself is based on non-application of mind. The petitioner has also placed reliance on judgement of the Hon'ble Apex Court reported in 2006(4) Supreme 578, wherein, on the basis of the non-application of mind to the representation made by the employees to show-cause, while setting aside the order of the High Court directing reinstatement with the continuity of service, the Hon'ble Apex Court has remitted the matter for fresh disciplinary action on the basis of the materials already on record. The petitioner has also relied upon the judgement of this Court reported in 2003(3) MLJ 191 wherein when proceedings were not initiated against 28 other similarly situated persons involved in the same incident of misconduct, the order of punishment imposed against one person was set aside.

6. Further, it is the case of the petitioner that the appellate authority ought to have applied its mind and passed orders by giving reasons. The petitioner has also alleged bias against the Enquiry Officer, since the report is without any proper reasons. That apart, it is the case of the petitioner that there was absolutely no evidence against the petitioner and in spite of it, the Enquiry Officer has submitted his report and there was no reasonable opportunities given to the petitioner to defend his case.

7. Even though, no counter affidavit has been filed on behalf of the respondent, Mr.Sreenivasan learned Government Advocate has made his submission on instruction.

8. Mr.P.Jayaraman learned Senior Counsel appearing for the petitioner would submit that the petitioner has an excellent carrier in the police department and he was rewarded earlier for his work and he has only 3 years of service before attaining superannuation and in these circumstances, the present order of punishment imposed by the second respondent as confirmed by the first respondent are not only against the rules but also against the basic principle of law.

9. The learned counsel has raised a legal point that the charge memo itself is vitiated, since it has been built up without any foundation and without explaining any specific violation of rules. He would also submit that even assuming that the charges have some basis, the conduct of the petitioner has always been bona fide. He would submit by quoting the wordings of the counter affidavit filed by the respondents in another case filed by the petitioner in respect of different charges stating that the petitioner had to leave instruction to subordinates after the visit in the scene of crime, since he had to appear before this

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Court in H.C.P.No.15 and 35 of 2005 and therefore it was bona fide. He would also submit that the charge memo issued in a premature stage. That apart, the procedure followed by the Enquiry Officer was not proper especially by examining P.W.1 to P.W.9 with regard to proof of charges. The defense witnesses were not treated as interested witnesses and the official document was not disowned by the Enquiry Officer by referring to Section 114 of the Evidence Act.

10. That apart, the learned Senior Counsel would submit that the statutory representations have not been considered and therefore, the orders of the original authority as well as the appellate authority have to be set aside for non-application of mind. He would also submit that as far as the order of the appellate authority the first respondent is concerned, it is totally a non-speaking order and relying upon the judgement of this Court in 2006(2) CTC 794, the learned counsel would submit that as per the rules governing the appellate authority's power, it is mandatory for the appellate authority to give reasons. He would also rely upon another judgement reported in 2006(4) CTC 52 to substantiate his contention.

11. On the other hand, Mr.Sreenivasan learned counsel appearing for the respondents would submit that the original order passed by the second respondent being the original authority dated 22.02.2006 has dealt with each and every one of the charges on the face of the Enquiry Officer's report and therefore, it cannot be said that the second respondent had no application of mind while passing the impugned order dated 22.06.2006. However, the learned counsel is unable to counter the argument advanced on behalf of the petitioner that the first respondent being the appellate authority has not considered the appeal as per the requirements of Rule 6 of the Tamil Nadu Police Subordinate Service Rules.

12. I have heard the learned Senior Counsel appearing for the petitioner as also the learned Government Advocate who was made submission on instruction and perused the entire records.

13. Before going into the contention raised by the learned Senior Counsel for the petitioner in respect of the validity of the order of the appellate authority namely the first respondent dated 19.09.2006, I am considering the submissions in respect of the order of the original authority namely the second respondent dated 22.06.2006 and also the report of the Enquiry Officer. While it is true that the second respondent while passing the order of punishment dated 22.06.2006 has not exhaustively dealt with and appreciated the evidence of each and every one of the witnesses as recorded by the Enquiry Officer and also has not considered the detailed representation of the petitioner dated 10.05.2006, after the enquiry was concluded. A reading of the

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order of the second respondent dated 22.06.2006 in fact shows that he has applied his mind in respect of each and every one of the charges and it cannot be safely concluded as if there was no application on mind on the part of the second respondent. The entire statements given by various witnesses numbering 9 and also the witnesses examined on the side of the petitioner himself numbering 3 and also marking of enormous documents not only on the side of the department and also on the side of delinquent shows that the petitioner was given adequate opportunity to participate in the Enquiry and therefore, there cannot be any objection on the part of the petitioner as if, the principles of natural justice was violated.

14. As far as the appreciation of evidence of each one of the witnesses is concerned, it is not like a civil case that by application of provisions of Indian Evidence Act, the evidence of each and every one of the witnesses is to be analyzed by the disciplinary authority before coming to a conclusion. It is sufficient on over all application of mind and appreciation of the evidence crisply, if the authority comes to a conclusion and in such circumstance there is absolutely no scope for judicial review and this Court cannot sit over the orders passed by the disciplinary authority by entering into the each and every one of the minute details. As correctly pointed out by the learned Senior Counsel appearing for the petitioner himself that the judgment reported in 1999(3) All India Services Law Journal 11, categorically says, "court will not normally interfere unless it is the case of no evidence". A perusal of the entire records show that it cannot be safely concluded that the present case on hand is a case of no evidence. There are abundant evidence available and for the reason that the minute provisions of the Indian Evidence Act regarding the appreciation of witnesses have not been followed by the disciplinary authority, it cannot be held to be a case of no evidence at all.

15. In this regard, a reference to the order of the second respondent dated 22.06.2006 definitely shows that he has applied his mind in respect of every one of the charges before agreeing with the Enquiry Officer in all these accounts and therefore, I am of the considered view that there is no scope for judicial review in respect of the order of the second respondent being the original authority dated 22.06.2006.

16. Now, referring to the order of the appellate authority namely the first respondent dated 19.09.2006, it is seen that the petitioner while preferring the appeal before the first respondent in his appeal petition dated 26.06.2006 has given and raised detailed grounds of appeal with minute particulars in respect of not only each and every charge but also on each and every count. Unfortunately, it remains the fact that the first respondent being

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the appellate authority has chosen to pass almost a single line order. The relevant portion of the order which says

> "I have gone through the appeal petition and connected records carefully, the contentions of the petitioner is not accepted, no new points have been furnished by the delinquent this appeal petition is considered and rejected."

17. Even without going into the relevant rules governing the duty of the appellate authority, as I have elicited above, the order of the appellate authority is on the face of it passed without application of mind.

18. Now, turning to the relevant rules. In this regard, the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rule, 1955, Rule No.3 contemplates the duties of the original authority in a disciplinary proceeding before passing orders by saying that reasonable opportunity of making representation must be given and in the oral enquiry an opportunity of cross examination must be given to the delinquent etc. In the present case as I have stated earlier, the original authority has not denied those rights to the petitioner as per the rules.

19. The powers of the appellate authority namely the first respondent is governed by the rules. Rule 6 contemplates as follows:

> " 1) In the case of an appeal against an order imposing any penalty specified in Rule 2, the appellate authority shall consider:-
>
> a) whether the facts on which the order was based have been established;
>
> b) whether the facts established afford sufficient ground for taking action; and
>
> c) whether the penalty in excessive, adequate or inadequate and after such consideration, shall pass such orders as it thinks proper
>
> 2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the Appellate Authority if such authority considers, for reasons to be recorded in writing, that the error or defect was not material and has neither caused injustice to the person concerned nor affected the decision of the case."

The rule contemplates that the appellate authority shall consider 3 aspects as to whether the order of the punishing authority was established on the facts and such facts established are sufficient to take action and that the penalty imposed is excessive, adequate or inadequate and it was after considering all the 3 issues, the appellate authority has to pass orders. As I have elicited above,

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a reading of the impugned order of the appellate authority namely the first respondent dated 19.09.2006 does not give even an iota of information as to whether the said conditions have been applied or even considered by the first respondent before passing the order. The appellate authority performing the statutory function is expected to act as per the rules and in the absence of following the same certainly the concept of judicial review will be extended in order to enforce the provisions of the statutory rules. Exactly similar question arose before this Court in K.Palanikumar Vs. The Director General of Police, Chennai-4 and others reported in 2006(2) CTC 794 wherein, this Court has held applying the Rule No.6 as elicited above. The appellate authority as well as the reviewing authority while passing orders under Rule No.6 & 15(A) are bound by the mandatory provisions of the said rules which contemplates not only appreciation of mind in respect of 3 matters but also give reasons based on the 3 matters as stated above. In fact, the learned judge while dealing with the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules 1955, has referred the similar Rule No.23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and when there was no application of mind and the rules were not followed quoting the earlier judgement reported in 2004(3) LW 32 rendered in M.Nagarajan and others Vs. Registrar High Court and another and also in 1983(2) MLJ 513 rendered in Sreenivasan Vs. Government of Tamil Nadu which was subsequently followed in respect of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 itself in W.P.No.27627 of 2005 in K.Kanagaraj Vs. Inspector General of Police, and following the same has held that the specific statutory rules have not been followed and therefore, set aside the appellate authority's order.

20. In the present case, it is no doubt true that the Rule 6, which empowers the appellate authority to decide, also imposes a mandatory duty on the part of the appellate authority to consider the 3 issues before deciding an appeal. Therefore, apart from the fact that the order of the first respondent is liable to be set aside on the ground of non application of mind, it is certainly against the mandatory provisions of the statutory rules and therefore, the same cannot stand the test of law and liable to be set aside.

21. In view of the same, considering that the mandatory provisions of Rule 6(A) has not been followed by the first respondent being the appellate authority, the impugned order of the first respondent dated 19.09.2006 is set aside and the entire matter is remitted back to the first respondent to decide the appeal afresh not only by applying mandatory provisions of Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rule 1955, but also by taking into consideration the detailed grounds of appeal filed by the petitioner dated 26.06.2006 and

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based on the above said mandatory guiding factors pass appropriate orders, and such order shall be passed by the first respondent within a period of 12 weeks from the date of receipt of the copy of the order.

The writ petition stands ordered in the above terms. No Costs. Consequently, connected W.P.M.P. is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional Director General of Police,
   (Law and Order)
   Chennai 600 004
   (Appellate Authority)

2. The Deputy Inspector General of Police,
   Villupuram Range,
   Villupuram.
   (Disciplinary Authority)

3. The Additional Superintendent of Police,
   Prohibition & Enforcement Wing,
   Enquiry Officer,
   Cuddalore District,
   Cuddalore.

+ one cc to the Government Pleader sr no. 60125
+ one cc to mr. M. Vijay Anand, Advocate sr no. 59439

RNA(CO)
NM(06.12.2006)

order in
W.P.No.39487 of 2006

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